



WEB COPY



Writ Petition No.19237 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2024

CORAM

THE HONOURABLE MR JUSTICE BATTU DEVANAND

WP. 19237 of 2018

&

WMP No.22626 of 2018

R.THILLAIGOVINDAN,
S/O.N.RANGANATHAN, RETD. JOINT DIRECTOR
OF FISHERIES, NO.14, VELAN NAGAR, IV STREET,
ALWAR THIRUNAGAR, CHENNAI 87

PETITIONER(S)

Vs

1.THE STATE OF TAMILNADU,
REP BY ITS CHIEF SECRETARY TO THE
GOVERNMENT, FORT ST. GEORGE, CHENNAI 9

2. THE STATE OF TAMILNADU,
REP BY ITS SECRETARY TO THE GOVERNMENT, ANIMAL
HUSBANDARY, DAIRYING AND FISHERIES DEPARTMENT,
SECRETARIAT, CHENNAI 9

3. THE COMMISSINER OF FISHERIES
(PRESENTLY THE DIRECTOR OF FISHEREIS),
SAIDAPET, CHENNAI 15

RESPONDENT(S)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, to call for the records



Writ Petition No.19237 of 2018

pertaining to the Letter No.14520/FS2/2016/3 dated 02.01.2017 on the file of the second respondent, to quash the same and to direct the second respondent to promote the petitioner to the post of Additional Director of Fisheries, retrospectively with effect from 19.11.2012 together with all the pays, perks etc, with corresponding pension after the superannation on 31.03.2013.

For Petitioner(s): Mr.R.Selvakumar

For Respondent(s): Mr.L.S.M.Hasan Fizal, AGP

ORDER

This Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records pertaining to the Letter No.14520/FS2/2016/3 dated 02.01.2017 on the file of the second respondent, to quash the same and to direct the second respondent to promote the petitioner to the post of Additional Director of Fisheries, retrospectively with effect from 19.11.2012 together with all the pays, perks etc, with corresponding pension after the superannation on 31.03.2013.

2.The case of the petitioner is that he worked as Joint Director of Fisheries till he attained the age of superannuation on 31.03.2013. While so, the second respondent vide G.O.Ms.No.131 dated 02.08.2012, created



Writ Petition No.19237 of 2018

two posts of Additional Director of Fisheries, in order to avoid stagnation for several years, in the higher post of Joint Director. According to the petitioner, he is the senior most Joint Director of Fisheries as on 02.08.2012. He is the first person, entitled to be considered for promotion to the post of Additional Director of Fisheries. The petitioner is entitled to be considered for promotion in view of the fact that he was stagnated without promotion in the post of Joint Director, right from 02.08.1996. Further, in the year 2012-2013, two estimated vacancies were approved and communicated by the Government and the Special Rules for the post of Additional Director of Fisheries were amended and issued as early as on 18.10.2012, wherein, it has been specifically stipulated that the incumbent shall have not less than 3 years of service as Joint Director of Fisheries. According to the petitioner, since he was working as Joint Director from 02.08.1996, he is fully eligible for consideration of promotion as Additional Director of Fisheries.

3.It is the further case of the petitioner that as the 3rd respondent herein was having grudge towards him and with the malice and with a deliberate desire to get rid of conferment of the post of Additional Director, he did not send the proposals, despite the Government sought for proposals



Writ Petition No.19237 of 2018

on 01.11.2012 and again on 29.12.2012. Though the proposals were approved by the 3rd respondent on 19.11.2012, in order to see that one Thiru Rengaraju, Joint Director, against whom 17(b) charges were pending also shall appear in the Panel, which could be done only after dropping of the charges against him, the proposals were not sent. On 19.11.2012, the charges against Thiru Rengaraju were dropped. Thereafter only, the communication was received by the 3rd respondent on 22.11.2012.

4. Thereafter, the third letter was sent by the 3rd respondent seeking proposals on 22.01.2013. The Government received the proposals dated 19.01.2013. However, immediately the 2nd respondent referred the matter to Personnel and Administrative Reforms Department, for remarks/advice, which file was returned, on the ground that the post of Joint Director is not within the purview of TNPSC. Thereafter, the 2nd respondent shortlisted the panel, wherein, the name of the petitioner was included at serial no.1. Instead of sending the proposals as approved by the 2nd respondent, the 3rd respondent has sought clarification from the Government with respect to some other candidates. Further, a suggestion was also given for empanelling more names of the incumbents. Like that the



Writ Petition No.19237 of 2018

panel was dropped at the instance of the third respondent without finalizing the issue of promotion to the post of Additional Director.

5.Meanwhile, vide letter dated 13.03.2013, a charge memo dated 26.03.2013 was issued to the petitioner. It was received by the petitioner on 28.03.2013. The petitioner was allowed to retire from service on 31.03.2013 on attaining the age of superannuation, vide GO (D) No.72, dated 28.03.2013.

6.Thereafter, the promotion order was issued in favour of one Mohanasundaram, without recalling him from deputation, against the advice of P & AR Department. While so, Mr.Rengaraju, Joint Director was promoted and posted as Additional Director of Fisheries (Marine) in the Directorate. Further, the second post of Additional Director was filled up only on 24.09.2013, which goes against the statement of the third respondent in his letter dated 21.02.2013. In the meanwhile, the Government had dropped charges against the petitioner on 15.10.2015, on the ground that the enquiry officer gave findings that the charges levelled against the petitioner were not proved.



Writ Petition No.19237 of 2018

WEB COPY

7. Thereafter, the petitioner had sent a representation dated 23.09.2016 to the second respondent, narrating all the facts, sought for retrospective promotion, which would enable him to get pension in a higher scale, after receiving the interest for the delayed payment of his Death cum Retirement Gratuity. However, the 2nd respondent, by the impugned order, refused to give the notional/retrospective promotion to the petitioner.

8.The learned counsel for the petitioner would submit that though the petitioner is fully eligible and qualified to be considered for the post of Additional Director, the third respondent intentionally delayed the proceedings of promotion to give undue benefit to some other candidates. Though the charges are levelled against the petitioner just before his retirement, the same were dropped by the State Government as per the findings of the enquiry officer.

9.In view of all the facts, the learned counsel for the petitioner would submit that the petitioner was denied promotion as Additional Director of Fisheries intentionally by the third respondent showing the administrative



Writ Petition No.19237 of 2018

latches and as such, their action to be declared as illegal, arbitrary and unjust and sought to quash the impugned order by allowing the Writ Petition.

10. On the other hand, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner retired from service on 31.03.2013 on attaining the age of superannuation and he was permitted to retire from service without prejudice to the disciplinary proceedings, which were pending against the petitioner. He further contends that when the juniors of the petitioner were promoted as Additional Directors, the petitioner was not in service. As such, the petitioner is not entitled for notional promotion and the second respondent has rightly rejected the request of the petitioner vide impugned order and he would submit that there is no infirmity or illegality in passing the impugned order by the second respondent and accordingly sought to dismiss the Writ Petition.

11. Heard the submissions of the respective counsels and carefully perused the materials available on record.



Writ Petition No.19237 of 2018

WEB COPY

12. It is an admitted fact that the petitioner is eligible to be considered for promotion to the post of Additional Director. The third respondent has to take steps to fill the vacancies from the persons, who are holding the post of Joint Director, Fisheries by following the relevant Rules at the appropriate time without causing any delay thereof. It appears that the third respondent had taken initiative for stagnating promotions to the post of Additional Director. It seems that process has been dragged on till the retirement of the petitioner and after the retirement of the petitioner only, in the month of July 2013, promotions were effected. This supports the allegation of the learned counsel for the petitioner that only to damage the prospects of the petitioner not to get promotion to the post of Additional Director, a charge memo was issued just one week prior to his retirement. Admittedly, the Government dropped the charges against the petitioner vide G.O.(D).No.435, Animal Husbandry, Dairying and Fisheries(FS2) Department dated 15.10.2015 by accepting the findings of the Enquiry Officer who held that the charges were not proved.

13. On examination of the material available on record and on



Writ Petition No.19237 of 2018

consideration of the facts and circumstances of the case, this Court is of the opinion that every attempt made by the third respondent to see that the promotion to the post of Additional Director of Fisheries could not be finalised before the retirement of the petitioner. The correspondence made between the third respondent and remaining respondents as well as with the other Government Departments, discloses that with an intention to damage the prospects of the petitioner only, the proceedings of promotion to the post of Additional Director has been dragged on by the third respondent. As such, there is considerable force in the contention of the petitioner that to do undue favour to some other candidates only, the promotion issue was delayed by the third respondent till the retirement of the petitioner, which is in the considered opinion of this Court, is illegal, arbitrary, unjust and discriminatory. Such type of illegal and bias action of the appointing authorities like the third respondent, has to be seriously dealt with in the interest of the affected parties. It would be the dream of every employee to retire in a higher post at the time of his retirement for which he is legally entitled and also it is beneficial to him to get higher pension.



Writ Petition No.19237 of 2018

14. In the present case, though the petitioner is legally entitled for promotion to the post of Additional Director of Fisheries, due to the inaction of the third respondent in taking steps in time and acted in favour of some other candidate, the petitioner could not get promotion as Additional Director of Fisheries and unfortunately, he retired as Joint Director of Fisheries as he left with no other option.

15. Under these circumstances, considering the request of the petitioner for notional promotion and to extend the retiral benefits, the second respondent ought to have considered the case of the petitioner in a proper manner and he ought not to have rejected the request of the petitioner by the impugned order, simply saying that due to the reason that the petitioner retired before the promotion given to his juniors, he is not entitled for the notional promotion and other benefits, which, in the considered opinion of this Court, is unreasonable and unjustified and therefore, the petitioner is entitled for the relief sought for in this Writ Petition.

16. Accordingly, for the reasons stated above, this Writ Petition is



Writ Petition No.19237 of 2018

allowed and the Letter No.14520/FS2/2016/3 dated 02.01.2017 on the file of the second respondent is hereby quashed. There shall be a direction to the second respondent to give notional promotion to the petitioner to the post of Additional Director of Fisheries retrospectively with effect from 19.11.2012 with all consequential benefits within a period of eight(8) weeks from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petition is closed.

11.12.2024

dn

To

1. THE STATE OF TAMILNADU,
REP BY ITS CHIEF SECRETARY TO THE
GOVERNMENT, FORT ST. GEORGE, CHENNAI 9

2. THE STATE OF TAMILNADU,
REP BY ITS SECRETARY TO THE GOVERNMENT, ANIMAL
HUSBANDARY, DAIRYING AND FISHERIES DEPARTMENT,
SECRETARIAT, CHENNAI 9

3. THE COMMISSINER OF FISHERIES
(PRESENTLY THE DIRECTOR OF FISHEREIS), SAIDAPET, CHENNAI
15



WEB COPY



Writ Petition No.19237 of 2018

BATTU DEVANAND, J

dn

Writ Petition No.19237 of 2018

11.12.2024